

12845

No. _____

Supreme Court of Illinois

Parsons.

vs.

Overmire.

71641  7

~~72~~
Ezekiel Parsons

74

William Overmire

~~72~~

74

1859

State of Illinois } Supreme Courts Term for
the 3^d Grand division

Ezekiel Parsons }
res }
William Overman }

And now comes the said Eze-
kial Parsons the ^{Appellant} ~~plaintiff in error~~ & says that in
the record & proceedings in this cause there is manifest
error in this to wit.

1st The judgment & verdict were for the defendants
when by the law & evidence they should have
been for the ~~defendants~~ plaintiffs

2 The Court below erred in refusing the plaintiffs
seventh instruction

3 The Court erred in giving the instructions & each
of them for the defendants

4 I do overruling the for New ~~trial~~

And the said ^{Appellant} ~~plaintiff in error~~ for these & other errors
apparent on said record prays a reversal of the
judgment below & a remanding of the cause.

Edw. Leland
Appellant
for ~~plff in error~~

And now comes the said defend-
ant by Richmond & Head his
attornies say that in the record
& proceedings aforesaid and in
the judgment aforesaid no such
errors as is alledged hath intervened
wherefore he prays that said
judgment may be affirmed
By Richmond & Head
his attys

Elizabeth Parsons

William Parsons

Applicant & cons

Parsons vs Overmire

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Pleas before the Honorable Circuit Court of Marshall County State of Illinois at a term thereof begun and holden at the courthouse in the City of Lacon in & for the County aforesaid on the day of A.D. 186-

Present the Hon.

Judge of the 9th Judicial Circuit of said State.

William H. Wallace States Attorney & Greenberry L. Fort Clerk & by James St & Boul deputy And A Gardner Sheriff

Be it remembered that heretofore to wit on the 27th day of March A.D. 1854, came the Plaintiff & made and filed in the office of the Clerk of said court his affidavit for a writ of replevin which said affidavit is in words and figures as follows to wit:

State of Illinois }
 Marshall County } p—

Ezekiel Parsons

Being duly sworn duly sworn deposes that he is entitled to the possession of a dark bay mare about eight years old and with foal and one set of double harness with long tug & bray mounting of the value of one hundred dollars and that the same has not been taken for any tax assessment or fine levied by virtue of any law of this State nor seized under any Execution or attachment against the goods and chattels of the said Ezekiel Parsons liable to Execution or Attachment. And that the said Property is unlawfully withheld from the possession of the said Ezekiel Parsons and is detained by one William Overmire of the County of Marshall and State of Illinois.

Subscribed and sworn

to before me this 27th
 day of March AD 1864.

Ezekiel Parsons

G. L. Fort clerk—

B

The People of the State of Illinois

To the Sheriff of said county, Greeting :

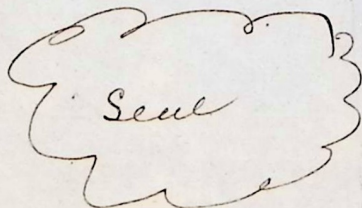
If Ezekiel Parsons of the
said county, shall give you bond, with good and sufficient security, to prosecute his suit to effect,
and without delay, and to make return of the following described goods and chattels, the property of
him the said Ezekiel Parsons to wit :

3

One black bay mare about eight
years old and with foal, and one
set of double harness with long trugs
and trap mounting of the value of
one hundred dollars as Plff. says

which William Overmire also of said county,
took and unjustly detains, against gages and pledges, as he saith, if return thereof shall be awarded;
and further to save and keep you harmless, in replevying said property ; then you are to cause the
said goods and chattels to be replevied and delivered to the said Ezekiel Parsons
Overmire without delay ; and to summon the said William
personally to be and appear before
our circuit court, in, and for said county, on the first day of the next term thereof, to be holden at
the court house in Lacon, on the 2^d Monday in the month of April
next, to answer to the plaint of the said Ezekiel Parsons
for taking and unjustly detaining the goods and chattels aforesaid. And make due
return of the bond to be taken from the said plaintiff as aforesaid, to the clerk of our said court, to-
gether with this writ, with an endorsement thereon, as to the manner in which you may execute the
same.

Witness, Greenberry L Fort clerk of the said court, this
27th day of March in the year of our Lord 1864 and the seal
of said court being hereto affixed



Greenberry L, Fort
clerk

14

Ezekiel Parsons the herein Having given Bond with
Samuel L Fleming as his security according to
the Statute. I did on the 27th day of March AD
1854 Execute the within writ by replevying the
within described property and delivered over
the same to the Plaintiff herein & did also
summon the within named William
Overmire by reading the within writ -
to him - March 27. AD. 1854.

Serica	50
Bond	50
Summ	50
mule	60
Delmng	100
Ret	10

Henry L Crane Sheriff
of Marshall County Ill

\$2 70

Replevin
Bond

5-

Know all men by these Presents that
we Ezekeil Parsons & Samuel Fleming
are held and firmly bound unto
Henry L Crane Sheriff of Marshall
County in the State of Illinois in
the penal sum of Two hundred
dollars lawful money of the United
States for the payment of which well
and truly to be made we and each of
us bind ourselves our heirs executors
and administrators firmly by these
presents. in Witness whereof we have
herunto subscribed our names &
affixed our seals done at Lason this
27th day of March A.D. 1854.

The condition of this obligation is
such that Whereas the above bounden
Ezekeil Parsons did on the 27th day
of March A.D. 1854. sue out of the
circuit Court of said Marshall County
in said State of Illinois a writ of
replevin to replevy from one William
Covermire the following described goods
and chattels to wit: one dark Boy
mare about eight years old with foal
and one set of double harness with
long tug & Brass mounting

of the value of one hundred dollars
and the same being about to be levied
upon by said Sheriff.

Now if the said Ezekiel Parsons shall
prosecute said Suit of replevin to
~~the~~ Effect and without delay and
make return of said goods & Chattels
if return thereof shall be awarded by said
Court, and save and keep harm
less said Sheriff from all costs and
damages in repleviny said goods &
Chattels then the above obligation to
be void otherwise to remain in full
force and virtue

His
Ezekiel Parsons, Jr.
March 11

Signed seal of
delivered in presence
of Henry L. Crane

March 27. 1854

Samuel Fleming, Secy

7

Declaration State of Illinois
Marshall County } 3 SS. -

Circuit Court Marshall
County April 1, A.D. 1854

Ezekiel Parsons complains of William Overmire in a plea of Replevin for that the said William Overmire on the 27th day of March A.D. 1854 at said County of Marshall was possessed of certain goods & chattels of the said Ezekiel Parsons To wit a dark Bay mare about eight years old and with foal, and one set of double Harrow, with short tines & trap mounting of the value of one hundred dollars to be ~~divided~~ delivered to the said Ezekiel Parsons when he the said William Overmire shall be thereto afterwards requested. Yet the said William Overmire though requested so to do has not delivered the said goods & chattels nor any part thereof to the said Ezekiel Parsons and so the said William Overmire wrongfully detains the same from the said Ezekiel Parsons to his damage fifty dollars & therefore he sues
By Ramsey & Fleming
Atty for Plff

Pleas Ezekiel Parsons }
 vs } Marshall County
 William Overmire } Circuit Court -
 April Term AD 1854
 Replevin -

And now comes said defendant by
 Fern & Bangs & Richmond & Burns Attys
 and defends the wrong & injury &c.
 When &c and says action non
 because he says the property in the
 plaintiffs declaration mentioned was
 not the property of the said Plaintiff
 and of this said defendant puts him-
 self upon the Country &c -

Fern & Bangs & Richmond & Burns
 Attys for Deft -

And the Plff doth the
 like Ramsey & Fleming
 for Plff

And for a further plea in this behalf
 said defendant says action non because he
 says the property in the Plaintiffs declaration
 mentioned at the time when & was
 the property of said defendant Wm
 Overmire and not the property of
 said Plaintiff as he hath

9

above thereof complained against
him, and of this he puts himself upon
the country. &c. Tenn & Bangs & Richmond
& Burns

Atty for defendt

And Plff. doth the like
Ramsey & Fleming
for Plffs —

And for further plea in this behalf
said defendant says Action non because
he says at the time when &c he did
not detain the property in the
plaintiffs declaration mentioned
in manner and form as said
plaintiff hath complained against
him — ~~upon~~ and of this he puts
himself upon the country & co.

Tenn & Bangs &
Richmond & Burns

And Plff doth the like
Ramsey & Fleming
for Plffs

Atty for deft —

10

Ezekiel Parson. Marshall Court
vs
William Overmire April 1. 1854
Replevin

Mark Bangs. one of the Atty for
William Overmire the said defendant
being ^{first} duly sworn deposes & says that
Ezekiel Parsons the Plaintiff in this
suit and that deponent is informed
and believes said Plaintiff has no
property liable to Execution or if any
not sufficient to pay the costs of this
suit & that the said defendants and
the officers of this Court will be in
danger of losing their costumes
said Plaintiff be ruled to give security
therefor.

Subscribed & sworn to }
before me the 11. th day } Mark Bangs
of April 1854. }
G L Fort. clerk

Ezekiel Parsons } Circuit Court of
vs } Marshall County
William Overmire } Illinois

Bond for April Term AD 1854
Costs. - I do hereby enter myself security for
costs in this cause and acknowledge
myself bound to pay or cause to be paid
all costs which may accrue in the
action either to the opposite party
or to any of the officers of this
court in pursuance of the Laws of
this state dated this 12th day of
April AD 1854.
Saml. L. Henning -

Plffs Ezekiel Parsons }
Instructions vs } Instructions for
William Overmire } Plaintiff

- 1 Personal property in the adverse possession
of another who claims title to the same
cannot be sold and transferred by
the real owner so as to vest the purchaser
with any title thereto. - Therefore
if the jury believe from the evidence
that at the time Shinn sold

Given

& harness in controversy to Richmond and Bangs; that the mare & harness was in the adverse possession of Parsons who claimed title to the mare & harness. - then Richmond and Bangs acquired no title by virtue of such sale -

Given

2.nd If the jury believe from the evidence that some time in February Shinn was indebted unto Parsons and that for the purpose of securing such debt it was agreed between Shinn and Parsons that Parsons should keep possession of said Mare until the Debt was paid - and that in pursuance of such agreement Parsons took possession of said Mare and was in possession of her at the time Gore took her and that Gore took the mare from Parsons, without Parsons consent and deliver her to Richmond and Bangs or to either of them, and that they or either of them sold said Mare to Overmire - and that Overmire at the time of purchasing the Mare had notice of the claim of the Plaintiff to her then the the jury should find for the Plaintiff.

3

If the jury believe from the evidence that Parsons had the right to the possession of the mare & harness in question by virtue of an agreement between Parsons and Shinn. At the trial the mare & harness was taken from him by Gore and that said mare & harness was taken from Parsons without his consent - and that the Defendant had notice of that fact at the time of his purchase then the jury should find for the Plaintiff.

Gore

4.

If the jury believe from the evidence that when Shinn sold the mare to Richmond & Burns that Parsons had possession of the mare and claimed the right to her then Richmond & Burns acquired no title by their purchase and could convey no title to the defendant Overmire, provided Overmire had notice of Plff claim to her -

Gore

5.

If the jury believe from the evidence that at the time Richmond & Burns bought the mare and harness in controversy, the same was in the actual possession of Parsons, and that Parsons

was at that time claiming to own the same- then Bangs and Richmond could gain no title to the property and it would make no difference ~~to~~ ~~be the~~ whether Richmond & Bangs had and notice of Parsons claim or not.

Given 6. If the jury believe that the witness Parsons has wilfully sworn false in any one material matter they may disregard his testimony altogether

7 If it was agreed between him and Parsons that the mare & Hearnif should be considered in the possession of Parsons as a matter of security for Debt- then during the existence of such agreement as between him and Parsons the Possession of such property would be deemed to be in Parsons although he may have permitted him to have used the property from time to time- and although they may have used the property jointly

Refused

Deft ^{vs} Parsons }
Instructions } The defendant asks the
Court to instruct the jury

Given

1 The plaintiff cannot recover in this action unless he has proved that he had the right to the possession when this suit was brought. —

Given

2. Even if the jury believe from the evidence that Shinn agreed that Parsons might have security on the mare to secure him (Parsons) in a Debt that Shinn owed to Parsons. Yet if the jury at the same time believe from the evidence that the mare was not delivered by Shinn to Parsons under such an arrangement between them, then any such arrangement is void in law as to the purchasers of Shinn without notice of Parsons right.

Given

3 If the jury believe from the evidence that such an arrangement was made between Shinn and Parsons as is mentioned in the 2^d Instructions, and that the mare was not put into the possession of plaintiff under such arrangement, and if the jury further

believe that Shinn sold the mare to Bangs and Richmond and that Richmond and Bangs afterwards sold the mare to Overmire then the jury ought to find for the defendant unless he had notice of Parsons claim ~~at~~ before the sale to him -

Given

4 If the jury believe from the evidence that Parsons and Shinn were carrying on a farm together and for the purpose of getting a team Shinn furnished a harness and the mare in question and and that Parsons and Shinn lived and worked together and sometimes one of them used the team and sometimes the other used it, and that this was the usage and custom of Parsons and Shinn from the time they went on the Webster place until the mare was sold by Shinn. then on these facts alone - Shinn had the legal possession of the said mare and on the same state of facts of the harness also

5 It makes no difference whether Overmire is entitled to the

Given

possession of the mare and harness or not. But to receive the plaintiff must show that he is entitled to the possession of the said property at the commencement of this suit

Given

6 If the jury find for the defendant then the plaintiff is entitled to recover damages for the detention of the property from the time this suit was brought until the present term. And if the jury find for the defendant they will assess such damages at what the proof shows the use of the mare and harness were worth for such time.

Qualify

Given

For P^lff ^{In qualification} - Instructions of Dept 4 Instructions But if the jury believe from the testimony that Skisler and Parsons agreed that the mare should be considered and deemed the property of Parsons until Parsons debt was paid then the possession was in Parsons although he may have permitted Skisler to use the mare occasionally & when the mare was returned to Parsons possession his lien was good ~~unless~~ under the contract

9. To entitle the plaintiff to recover in this action he must prove to the satisfaction of the jury that at the time of the commencement of this suit he was entitled to the possession of the property. Repleved and the Plaintiff without such right of possession is not entitled to recover against the defendant through the defendant had no title to such property

Given

10. If the jury believe from the evidence that the Witness Webster has wilfully sworn falsely to any material fact then the jury may disregard his testimony altogether

Given

11. For Defendant

If the jury believe from the evidence that Parsons had possession of the property Repleved as the agent of him or to take care of it for him at the time of the sale by him and claimed no other title or possession whatever then the plaintiff is not entitled to recover upon the strength of such possession or title

Given

Pleas before the Hon circuit
Court of Marshall County in the
State of Illinois at a term thereof
begun and holden at the Court
house in the City of Laron in &
for said County on Monday the
14th day of April A.D. 1856.

Present the Hon Madison C
Hollister judge of the 9th Judicial
Circuit of said State
W H Wallace States Attorney
A Gardner Sheriff Ed Fort Cash
& by Jasst C Boul Deputy

Be it remembered that on
the 22^d day of April A.D. 1856
it being one of the days of
said term of said Court among
other things the following pro-
ceedings were had —
That is to say —

Ezekiel Parsons

vs

Replevin

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William Overmire

Be it remembered that this day this cause coming on to be heard and tried and the issue being joined a jury comes to try the same. So Wit- Daniel Hollenback Thomas Ellis William D Lowden Joseph Ray William Garrison William Boye William Atwood James Callin Thomas Judd Richard Vinecore William A Weston & George W E Cook twelve good and lawful men chosen tried & sworn according to law. and who after hearing the evidence adduced the argument of counsel. - and the instructions of the court retire to consider of their verdict and after due deliberation return into court - and say. We the jury find the issue joined herein in favor of the defendants and assess his damages at the sum of fifty nine dollars. It is therefore considered by the court that the said defendant have and recover of and from the said Plaintiff the aforesaid sum of fifty nine dollars together with his costs and charges by him about his defence in this behalf expended. And it is Ordered that execution issue

therefor. And it is also considered and ordered that the said defendant have a writ of retorne habendo for the said horse repleved herein

Whereupon comes the said Plaintiff by Fleming Ramsey & Pratt and enters herein his motion for an arrest of judgment & new trial herein. And the Court after hearing the argument of Counsel and being fully advised in the premises. doth order and adjudge that said motion be overruled—

Be it remembered that thereafter roadster wit on the 26th day of April A D 1856 it being one of the days of said term of said Court among other things the following proceedings were had. That is to say

Erskine Parsons	}	Replevin
vs		
William Overmire		

And now comes the Pff and prays an appeal to the Supreme Court which is allowed upon Condition that he enter into

~~Security~~ bond in the penal sum
of three hundred dollars with Samuel
L Fleming as security within thirty
days from the adjournment of this
court and it is also ordered ~~that~~
by the Court that the Bill of exceptions
herem be settled & filed herin in
thirty days from this day —

Bill of ^{vs} Erskine Parsons } Replevin - 27
William Overmire }

Exceptions

Be it remembered that on the trial of this cause the Plaintiff to maintain the issue on his part introduced John Webster a witness who being duly sworn testified as follows. -

That he was acquainted with the Plaintiff and with James Shinn that during the month of February 1854, the Plaintiff and said James Shinn both lived upon a farm in Marshall County belonging to the witness - That some time prior or about the first day of February in said year. Witness said to said James Shinn the mare in controversy in this suit - That at that time said Shinn owned and had the Hearnep in controversy in this suit - That some time about the last of February in said year the Witness had a ~~controversy~~ conversation with James Shinn which conversation so far as it related to Shinn's declaration not made in the presence of Plff were objected to by Plff & objection overruled by the court. - in which the witness asked said Shinn if he (Shinn) had given the Plaintiff (Parsons) a mortgage to secure his debt. That said Shinn said he had not given a written mortgage but that he had turned out the said Mare and Hearnep to the Plaintiff for him to hold until his debt was paid -

Shinn also said at the same time that he owed Parsons over a hundred Dollars - and that Parsons was to hold the mare and keep it until it was paid that it was for borrowed money. -

Witnep further testified that said Parsons and Shinn had taken and was to work, Witnep's farm for that year jointly. - That said Parsons had furnished one - horse, and said Shinn had furnished the mare in controversy that they had kept the two together to make a team. - and had used & had intended to use the team for the mutual benefit of both.

That from the time of the conversation between Witnep & Shinn and the trial when the mare was afterwards taken from Parsons by Gov. Witnep had always heard Parsons speak of the mare as his. that he always claimed her. that Witnep had heard Parsons call the mare his in Shinn's presence and Shinn made no answer.

That during that period Witnep saw both Parsons and Shinn use the team.

Witnep further testified that he had heard both Parsons and Shinn state that Shinn owed Parsons over one hundred Dollars. that Parsons used the mare as his own -

Said Witness further testified that some time in the month of March 1854 Parsons, and Shinn and Witness went together in a wagon to a sale. That the said team was drove before the wagon and drove by Parsons to the sale - That at the sale Shinn killed Organ and was arrested and taken off that he did not return with Parsons and the Witness - That Parsons drove the said team home. That from that time to the time the mare and harness in controversy was taken from Parsons by Gore - That Parsons was in the actual possession of said mare and harness claiming title to the same, and calling the same his own. - That Shinn never came back - that before & after his suit commencing with Shinn when Parsons desired he took the team, & ~~said it~~ used it & that Shinn, ~~when Parsons desired~~ he took the team & also used it whenever he desired & that he saw no difference in the use of said team. That he Webster during the whole of said February & March lived in the same house with Shinn & Parsons. That 1st of Feb Shinn bot the mare of him & parted for her -

30

On Cross examination said
Witness stated that after Shinn was
arrested Witness saw notes made
by Shinn in favor of Parsons in
Parsons possession for more than
One hundred Dollars that the notes
bore date 4 to 6 weeks prior to
the time witness saw them. —

The Plaintiff then introduced Elias
Ramsay a witness to ~~to~~ who being sworn
testified that in the ~~month~~ Month
of March 1854. before the Defendant
Overmire purchased the Mare and Foal
in controversy that Witness as the agent
for and at the request of the Plaintiff
notified the defendant that the Plaintiff
notified the defendant that that the Plaintiff
claimed the said property and would
~~aff~~ replevy the same. — to which the de-
fendant replied that he did not care
that he should hold Richmond for
it —

Witness further testified that after said
defendant had purchased said property
and before the commencement of this
suit Witness as the agent of and at the request
of the Plaintiff demanded the property in con-
troversy from the defendant and that
he refused to deliver the same —

11

31

The Plaintiff then introduced John C. Gore, a Witness who being sworn testified that at the agent and at the request of S L Richmond and Mark Bangs Witness went from Lacon towards where Parsons lived after the property in controversy. That Witness met Parsons on the way who was driving the mare in controversy with another horse before a two horse wagon. That Witness had an execution against said Parsons, and proceeded to levy the same upon the other horse.

That Witness also took the mare and Hearnep in controversy - but against the will and consent of Parsons. That Witness took the property in controversy to Lacon and delivered the same to Bangs -

On Cross examination Witness testified that when he took the property in controversy from Parsons that Parsons said he had the mare and should hold on to it. That he was liable to Webster for the price of it or something to that effect.

The Plaintiff here rested his case

31

The Plaintiff then introduced John C. Gore, a Witness who being sworn testified that at the agent and at the request of S L Richmond and Mark Bangs Witness went from Lacon towards where Parsons lived after the property in controversy. That Witness met Parsons on the way who was driving the mare in controversy with another horse before a two horse wagon. That Witness had an execution against said Parsons, and proceeded to levy the same upon the other horse.

That Witness also took the mare and Hearnep in controversy - but against the will and consent of Parsons. That Witness took the property in controversy to Lacon and delivered the same to Bangs -

On Cross examination Witness testified that when he took the property in controversy from Parsons that Parsons said he had the mare and should hold on to it. That he was liable to Webster for the price of it or something to that effect.

The Plaintiff here rested his case

The Defendant then introduced Stephen Parsons a Witness who ~~was~~ testified that he was a nephew of the Plaintiff. That shortly after Shinn brought the mare in controversy from Webster that Witness applied to Shinn to purchase said mare that Shinn informed him that Parsons had a claim on her and she could not be sold except by Parsons's consent. That Witness applied to Parsons and Parsons said his claim was not much - a forty dollar note or something like that if Witness wanted to buy her, to buy her and he would not object -

Witness also testified that he was present at the sale when Shinn was arrested for killing Oregon. That Shinn said to Parsons to take the mare calling her by name home and take good care of her. That he would be home in three or four days. That Shinn was arrested immediately after the killing of Oregon -

The Defendant then called Mark Bangs who being sworn testified that he had an interest in the event of the ~~suit~~ suit. - That he had no notice of Parsons claim on the property in

controversy at the time of his purchase of it. That he had sold out his interest in the property to Richmond. The Plaintiff consented that Bump might testify ~~to~~ waiving all objections to his competency. —

The defendant then closed his case —

The Plaintiff then called Samuel Haynes who testified that some time in February or March AD 1854 Witness saw Parsons, driving the team.

That Parsons then claimed to own the mare in controversy, but told Witness that the other horse in the team belonged to Shinn —

This was all the testimony in the case.

The Plaintiff asked the following instructions To wit
 "(See instruction No 7, asked by Plff and marked
refused (by the Court) at page. Ante)

Which said Instruction the Court refused to give to which ruling of the Court in refusing to give the said

instructions the Plaintiff by his counsel then and there objected and excepted

At the request of the Plaintiff the Court gave the following instructions To wit
(See Instructions Nos 1. 2. 3. 4. 5. & 6.
given by the Court for Plff on page
Ante.) — (which were all
the Plffs instructions)

At the request of the Defendant the Court gave the following instructions To wit.

(See all Defts instructions on page
Ante.) —

To the giving of which said instructions and each and every one thereof the Plff by his counsel then and there objected but the Court overruled his objections and gave the said instructions to which ruling of the Court, the Plaintiff by his counsel then and there excepted

The jury then returned the following verdict To wit

~~We the~~

~~Case of~~

Verdict State of Illinois } Circuit Court April ³⁵
Marshall County } Term of said County
AD 1856.

Case of Ezekiel Parsons }
vs }
William Overmire }

We the undersig
ned jurors in the above entitled cause
do find for the defendant and assess
the damages for the use of mare & harness
replevin hereon at the sum of fifty
nine dollars

April 23 AD 1856. The Plaintiff then moved the
court for a new trial in this cause for the following reasons. To wit

Reasons for a
New Trial

Ezekiel Parsons }
vs } Marshall Circuit Court
William Overmire } April 1. 1856.

Replevin

Plaintiff moves the Court for a new trial
in this cause for the following reasons to wit

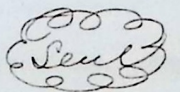
- 1st The verdict was against the law
- 2nd The verdict was against the evidence
- 3rd Because the court erred in refusing to give instructions
asked marked No -
- 4th Because the court improperly gave to the jury each and
all of the instructions asked by the defendant
- 5th The verdict is against the instructions of the Court.

Pratt Fleming for off

Which motion of the Plaintiff was overruled by the Court and the Court then gave judgment on the said verdict.

To which ruling of the Court in overruling said Plaintiff said Motion for a new trial and in giving judgment on the said verdict the Plff by his counsel then and there objected and excepted.

And pray that this his bill of exceptions may be duly signed and sealed which is accordingly so done -

M C Hollister 

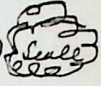
Know all men by these presents that
we Ezekiel Parsons and Samuel L Fleming
are held and firmly bound unto William
Overmire in the penal sum of three hundred
dollars lawful money of the United States
for the payment of which well and truly
to be made we bind ourselves our heirs
and administrators jointly, severally and
firmly by these presents Witness our hands
and seals this nineteenth day of May AD
1856. ~~The Consideration~~

The Condition of the above obligation
is such that whereas the said William
Overmire did at the April Term 1856 of
the Circuit Court in Marshall County
& State of Illinois on the 22^d day of April
aforesaid recover judgment against
the above bounden Ezekiel Parsons

the sum of fifty nine dollars
& costs and also for a writ for return
of the property repleveed. in said suit
from which judgment the said
Ezekiel Parsons has taken an appeal to the
Supreme Court of said state of Illinois.

Now if the said Ezekiel Parsons
shall prosecute his said appeal with effect
and in case said judgment be affirmed
pay said judgment, costs interest

in damages than the above obligation
will void otherwise to remain in full
force and effect

Ernest Parsons 

by his Atty in fact Samuel L Fleming

Approved & filed
May 9. 1856
G. H. Fort, clerk

Samuel L Fleming 

Let a supersedeas issue. Secured,
Samuel L Fleming penal sum
three hundred dollars
J. D. Carr

State of Illinois }
Marshall County } S.S.

I G. L. Fort clerk of the
circuit Court of said County do hereby
certify that the foregoing is a true
transcript from the records of said
Court and the papers on file in the
case of Ezekiel Parsons vs William
Overmire in replevin heard and
tried therein, all of which appears in
my said office —

In testimony whereof
I have hereunto set my name
and affixed the seal of
said Court at Lacon this
19th day of June A.D.
1856

G. L. Fort clerk

Clerks fee

Making Transcript

& Certificate & seal \$8.60

⁷⁴⁶
Ezekiel Parsons
vs. 74
William Overmire
Appeal from Marshes

^{assigned}
Recent errors -



Filed Sept. 18. 1857
L. Leland
Black

Refiled May 6. 1858
L. Leland
6112

Ezekiel Parsons }
or } Supreme Court 3^d
William Overmire } Division April Term
1859

Argument for the defendant
by J. B. Richmond

This is an action of Replevin brought by Parsons or Overmire to recover a mare, and harness. The jury in the Court below found a verdict for the defendant.

The first point made by the plaintiff in this Court is, that the verdict is contrary to the evidence. And the argument by counsel to sustain this point is, that, there is nothing in the record to show that Shinn sold the property to the defendant or to those under whom he claims the property.

My answer to this is that the plaintiff must show that he is the owner. The defendant is not required to show that he is entitled to the property, and his adversary the plaintiff must rely upon the validity of his own title and not

upon the weakness of the title of
the defendant

But it is said that Overman
could not ~~raise~~ the question the
validity of the title of Parsons ~~for~~
unless he first shows that he
(the defendant) is a subsequent
~~state~~ (bona fide) ~~person~~ ^{person} that therefore
Overman not having shown that
he had bought the property, he
was not in a condition to question
the title of Parsons on the ground
that there was no delivery of the
property to him by him

But I insist that
there is enough in the record to show
the ground upon which the defendant
Parsons claimed the ^{property}. The witness Ramsey
- a witness for Parsons - testified that
After the Overman had purchased
the property, he as agent of Parsons
demanded it of Overman, he says
further that before the defendant
Overman purchased the property
he (witness) notified him of Parsons
claim to it, and that Overman
replied that he did not care, that
he should hold Richmond for it

Therefore all this language if Overmire
had never brought it. All this testimony
the Court will observe was given by
Parron's own witness - testimony which
he cannot ~~question~~ or impeach

The fact is that it was
conceded on the trial that ~~Parron~~^{Overmire}
had bought of Richmond & Bangs
and that they had bought of Smith.
Now I insist not only that the
record shows with sufficient cer-
tainty that Overmire had bought
the property but that he had bought
it of Richmond.

If this is not so why
did he tell Parron that he should
hold Richmond good for the
property? How could he hold Richmond
for it unless he had bought it
of him.

I understand that Counsel
make these suggestions to show that
~~the~~ Overmire's 2^d & 3^d instructions
have no application to the facts
for I think that no person will
seriously question that these
instructions as legal propositions
are correct. And if it be true that

these instructions had no applicability
to the facts - that they were mere
abstract propositions, ~~yet they would~~
~~not for that~~ yet it would
not for that reason be error
to give ^{them} this is a question as I
think too well settled to require
authority to be referred to for its
support

But Counsel refer to the
case of McClow or Auker 11 Ill
558. to show that a sale of property
held adversely to the vendor will
not pass the property

In reply I say that,
that case has no application to
this suit, for I insist that
Parsons did not hold the property
adversely to Sprin, I go further
and say that he did not have
the possession at all

It is true that he
had the care and custody of it
but he no more had the possession
of it than does the grover
have the possession of his
own master's house

Let us see for a moment

what the facts are

Parsons and Shinn
were carrying on a farm together
existing to make up a team. Each
furnished a horse and Shinn
besides furnished the harness.

The harness was put
out ~~on~~ their two horses and they
went together to a sale where
the difficulty occurred which caused
Shinn's imprisonment, but before
he is taken away he tells Parsons
to take the horses home and
take care of them and he will
be there soon. Parsons takes them
home and probably did take
care of them.

Now what is the result
Manifestly this: that during all
this time and until Shinn sold
the property, he and Parsons in law
had the possession of the horse
and harness which either owned it must
be said that Parsons had the
possession of Shinn's horse and
harness any more than it can
be said that Shinn had the
possession of Parsons horse. The truth

is that during all the time that
Parson, had the exclusive custody
of the property in question he
held it under him and by
his Express orders and directions

Suppose a Livery
Stable Keeper directs one of his
men or any other man to take
one of his Horses home to his own
house and keep it over night
and that he will call for it
the next ~~day~~ ^{day} in the way home the
person so directed casually
observes to some one that the
property is his own. Now would
any sane man - whether lawyer
or not - maintain that the owner
could not sell the horse while
or in the care and custody
of such person? Certainly not,
and upon the obvious reason
that such person would hold
the horse under and by author-
ity of the owner and not
adversely to him, but Counsel for
Parson, would say he has the
possession and claims title his
(and the claim of title shows

that he holds adversely to the owner
therefore the owner cannot sell
it, what a manifest perversion
of the law as laid down in
McChoon or ~~At~~ Ankney before
cited.

And now let me enquire
wherein the case I put differs
from the one at bar. I can see
none. There is not one atom of
proof in the whole record to show
that Parsons ever for an hour
had the possession of the property
as his own, or that Shrum ever
authorized him to keep it as his
own or to keep it at all, except
for a brief period until his
return. Shrum's prolonged absence
does not help out the Parsons
case it rather helps our side.

Why then could not
Shrum sell the property I enquire
I can see no reason why.

The fact is this man
Parsons acted just as a great many
other people act, when they see that
a friend is in unfortunate cir-
cumstances and not in a condition

To defend himself they will
legally or otherwise steal what
little substance he has

The whole case was
fairly given to a jury of honest
intelligent men who upon their
oaths papered upon all the facts
with all the witnesses before them
and rendered a verdict for the
defendants and thereby rendered
substantial justice and I think
the Court below did right in
refusing a new trial

But I am disposed
to enquire a little into Parsons
pretended title to this Mare and
chance upon another ground
(~~that~~ ^{it is the horse, this is a pretence that happens, perhaps})
It was and is claimed that it
was pledged to him to secure a
debt. Pledged how? in what way
or manner and when? and for
how much, these are questions which
nobody can answer. I always thought
that a pledge or pawn properly
something was required to be done
by the person making the pledge
that there ought to be a delivery of
the paper, that merely telling a

mean that he could have the property
would not amount to much

One witness testifies
that Shinn said that he owed
Persons over a hundred dollars. I
believe another that he only owed
him about forty dollars. Another
witness states that Persons said
he had consented that Shinn might
sell the mare. The fact is the
whole evidence shows that
Persons claim was a mere
pretence that it was trumped
up claim, that after Shinn had
got himself into difficulty he
owed claim the property ~~or~~
that is the mare (for if I am
not mistaken he never claimed
the harness at least until
after Shinn's imprisonment) as
his own. And the probability is
that he came to this conclusion
after consulting with Flemings
Quorser and seeing all the way
through this case, who might have
been anxious to get a case to try
(and if it be true as my friend Judge
Seland suggests that Richmond Range

are lawyers and were to take the property as part pay for defending Shinn and lend his aid to deprive a brother lawyer of a little fee of about a hundred dollars for defending a man for Murder a dignified manly act surely

The Court will bear in mind that there is no evidence in the record tending to show that either Richmond & Bungs ever had any notice of Parsons pretended claim to the ^{more} until after they bought the property so there can be no pretense that they were purchasers or purchasers at all with notice

I think the 7th instruction asked by Parsons and refused by the Court is not law. It goes upon the hypothesis that if Shinn and Parsons agreed merely that the property should be considered in the possession of Parsons to secure a debt then the possession was in Parsons. A far fetched conclusion in my judgment

I do not think this Court will reverse this case on the ground

that the verdict is manifestly
Contrary to the Evidence. The whole
case was submitted to the jury
it was the peculiar province of
the jury to say what the facts
were. And to be reversed for the
reason that the verdict was
wrong, the Court must be satis-
fied that it is manifestly and
palpably wrong, a conclusion
which I think the Evidence will
not warrant.

If this case then is
reversed it will be done because
the 2^d & 3^d Instructions given for
Overmire were wrong. Judge
Seland in his brief insists that
that it does not matter if the
man was not delivered by
Shinn to Parsons yet if he got
the possession, it does not matter
- this suggestion is made with
reference to the 2^d Instruction -

But I think much
depends how he got it, if he got it
at all, ~~was the~~ did he get it wrong-
fully, or if by consent of Shinn did
he get it under any arrangement

made with Shinn under a contract
pledging the property, there is no
evidence that he did, but it only
appears that Shinn gave his consent
for him to take it and keep it for
him (Shinn) for a few days.

Again what is possession
in law as applicable to this case?
is it merely handing over property
to one person to be kept for the real
owner, I insist it is not but if it
is, then I ask would such acts
amount to an adverse possession
clearly not, what is adverse pos-
session? it is holding property, not
by the consent of, but contrary to
the will and wishes of another
and I submit that Persons had
no such possession, for these
reasons I think the 1st Instruction
given for the defendant's Government
is the law.

Counsel say the 3rd Instruc-
tion is worse than the 1st but he don't
understand to tell us wherein it is or
give us any reason why it is wrong
and all I have to say about it is, that
my argument about the 1st instruction

will apply with equal force to the
3d

Again counsel say that there
is no evidence in the record that
Shinn had the paper in at the
time he sold to Richmond and Pump.

But I contend that he had,
and that the record shows
that he had the paper in all
the time, until he sold to Richmond
& Pump, for the reason that he
owned the property, and the title
to property carries with it the possession
the real owner is presumed to have
the possession no matter who has
its care and custody under him
and for him, It follows then that
Shinn being the admitted owner
and no one else having any
possession adversely to him, he
had a right to see it, the record
shows he did see it, and that
is the whole of it. These questions
have been discussed on each side
as though the same facts ~~existed~~
existed as to the barns that does
to the man but this is not so, I
think it is not claimed that the

74
Supreme Court
April Term 1859

Ezekiel Parsons
vs

William Coernius

Argument
by S. S. Richmond

Filed April 28, 1859

L. Leland
Clerk

STATE OF ILLINOIS, Supreme Court, April Term, A. D. 1859.

ABSTRACT OF PLAINTIFF IN ERROR.

EZEKIEL PARSONS, }
vs. } Error from Marshall County.
WILLIAM OVERMIRE, }

Replevin in the delinet. Issues—non delinet; Property not Plaintiff's; Property Defendant's, not Plaintiff's. Verdict for Defendant. Motion for new trial overruled.

27 BILL OF EXCEPTIONS. — John Webster, being sworn, testified as follows: That he was acquainted with the plaintiff and with James Shinn; that during the month of February, 1854, the plaintiff and said James Shinn both lived upon a farm, in Marshall county, belonging to the witness; that some time prior, or about the first of February in said year, witness sold to said James Shinn the mare in controversy in this suit; that at that time said Shinn owned and had the harness in controversy in this suit; that sometime about the last of February in said year, the witness had a conversation with James Shinn, (which conversation, so far as it related to Shinn's declarations not made in presence of plaintiff, was objected to by plaintiff, and objection overruled by the Court.) in which witness asked said Shinn if he (Shinn) had given the plaintiff (Parsons) a mortgage to secure his debt; that said Shinn said he had not given a written mortgage, but that he had turned out the said mare and harness to the plaintiff for him to hold until his debt was paid; that Shinn also said at the same time that he owed Parsons over a hundred dollars, and that Parsons was to hold the mare and harness until it was paid; that it was for borrowed money. Witness further testified that said Parsons and Shinn had taken and were to work witness' farm for that year jointly; that said Parsons had furnished one horse, and said Shinn had furnished the mare in controversy; that they had kept the two together to make a team, and had used, and had intended to use, the team for the mutual benefit of both; that from the time of the conversation between witness and Shinn, until the trial, when the mare was afterward taken from Parsons by Gore, witness had always heard Parsons speak of the mare as his; that he always claimed her; that witness had heard Parsons call the mare his in Shinn's presence, and Shinn made no answer; that during that period witness saw both Parsons and Shinn use the team. Witness further testified that he had heard both Parsons and Shinn state that Shinn owed Parsons over one hundred dollars; that Parsons used the mare as his own. Said witness further testified that some time in the month of March, 1854, Parsons and Shinn and witness went together in a wagon to a sale; that the said team was driven before the wagon, and driven by Parsons. to the sale; that at the sale, Shinn killed Orgon, and was arrested and taken off; that he did not return with Parsons and the witness; that Parsons drove the said team home; that from that time to the time when the mare and harness in controversy were taken from Parsons by Gore, Parsons was in the actual possession of said mare and harness, claiming title to the same, and calling them his own; that Shinn never came back; that before and after his suit commencing

with Shinn, when Parsons desired he took the team and used it, and that Shinn also used it whenever he desired; that he saw no difference in the use of said team; that he (Webster) during the whole of said February and March, lived in the same house with Shinn and Parsons; that 1st of February Shinn bought the mare of him and paid for her.

On cross-examination said witness stated that after Shinn was arrested, witness saw notes made by Shinn in favor of Parsons, in Parsons's possession, for more than one hundred dollars; that the notes bore date four to six weeks prior to the time witness saw them.

30 The plaintiff then introduced Silas Ramsey, a witness who being sworn, testified: That in the month of March, 1854, before the defendant Overmire purchased the mare and harness in controversy, the witness as agent for and at the request of plaintiff, notified defendant that plaintiff claimed said property, and would replevy the same, to which defendant replied that he did not care, that he should hold Richmond for it. Witness further testified that after said defendant had purchased said property and before the commencement of this suit, the witness as agent for and at request of plaintiff demanded the property in controversy from the defendant, and that he refused to deliver the same.

31 The plaintiff then introduced John C. Gore, a witness, who being sworn, testified that as the agent and at the request of S. L. Richmond and Mark Bangs, he went from Lacon toward the place where Parsons lived after the property in controversy; that he met Parsons on the way, driving the mare in controversy with another horse before a two horse wagon; that witness had an execution against said Parsons and proceeded to levy the same upon the other horse; that witness also took the mare and harness in controversy, but against the will and consent of Parsons; that witness took the property in controversy to Lacon and delivered the same to Bangs.

On cross-examination, witness testified that when he took the property in controversy from Parsons, Parsons said he had the mare and should hold on to it; that he was liable to Webster for the price of it, or something to that effect.

The plaintiff here rested his case.

32 The defendant then introduced Stephen Parsons, a witness, who testified that he was a nephew of the plaintiff; that shortly after Shinn bought the mare in controversy from Webster witness applied to Shinn to purchase said mare; that Shinn informed him that Parsons had a claim on her and she could not be sold except by Parsons's permission; that witness applied to Parsons and Parsons said his claim was not much—a forty dollar note or something like that—and if witness wanted to buy her, to buy her, and he would not object. Witness also testified that he was present at the sale when Shinn was arrested for killing Organ; that Shinn said to Parsons to take the mare, calling her by name, home, and take good care of her; that he would be home in three or four days; that Shinn was arrested immediately after the killing of Organ.

33 The defendant then called Mark Bangs, who being sworn, testified that he had an interest in the event of the suit; that he had no notice of Parson's claim on the property in controversy at the time of his purchase of it; that he had sold out his interest in the property to Richmond.

The plaintiff consented that Bangs might testify, waiving all objections to his competency.

The defendant then closed his case.

33 The plaintiff then called Samuel Haynes, who testified that sometime in February or March,

1854, witness saw Parsons driving the team; that Parsons then claimed to own the mare in controversy, but told witness that the other horse in the team belonged to Shinn.

This was all the testimony in the case.

The 7th instruction for plaintiff, refused by the court, and to which refusal plaintiff excepted, is as follows:

- 14 If it was agreed between Shinn and Parsons that the mare and harness should be considered in the possession of Parsons as a matter of security for debt, then during the existence of such agreement as between Shinn and Parsons, the possession of such property would be deemed to be in Parsons, although he may have permitted Shinn to have used the property from time to time, and although they may have used the property jointly.

The Court, at the request of defendant, gave the following instructions, to which, among others, plaintiff excepted.

- 15 2. Even if the jury believe from the evidence that Shinn agreed that Parsons might have security on the mare to secure him (Parsons) in a debt that Shinn owed to Parsons, yet if the jury at the same time believe from the evidence that the mare was not delivered by Shinn to Parsons under such an arrangement between them, then any such an arrangement is void in law, as to the purchasers of Shinn, without notice of Parsons' right.

3. If the jury believe from the evidence, that such an arrangement was made between Shinn and Parsons as is mentioned in the 2d instructions, and that the mare was not put into possession of plaintiff under such arrangement; and if the jury further believe that Shinn sold the mare to Bangs and Richmond, and that Richmond and Bangs afterwards sold the mare to Overmire; then the jury ought to find for the defendant, unless he had notice of Parsons' claim before the sale to him.

- 17 6. If the jury find for the defendant then the plaintiff is entitled to recover damages for the detention of the property from the time this suit was brought, until the present term; and if the jury find for the defendant, they will assess such damages at what the proof shows the use of the mare and harness were worth for such time.

ERRORS ASSIGNED.—1st. Judgment and verdict should have been for plaintiff, and not for defendant.

2d. Refusing plaintiff's 7th instruction.

3d. Giving instructions for defendant.

4th. Overruling motion for new trial.

SUPREME COURT, 3d DIVISION, April Term, 1859.

PARSONS vs. OVERMIRE.—*Error to Marshall.*

The facts are, that one Shinn in February or March, 1854, being the owner of the property in the ^{mare} mentioned, and being indebted to the plaintiff, Parsons, mortgaged or pledged it orally to secure a debt due from Shinn to Parsons. Parsons and Shinn at the time, lived in the same house, and were carrying on a farm together, and this mare and harness and a horse of Parsons' were afterwards used together as a team, sometimes by one and sometimes by the other. Shinn and Parsons went in March, 1854, to a sale, with the team, and there Shinn killed a person and was arrested, and Parsons drove the team home, and afterwards had possession of it. Shinn was arrested and never came back.

The defendant claims, probably, under a sale from Shinn to Richmond and Bangs, and a sale by them to the defendant. There is, however, no evidence in the record of any such sale by Shinn; but it may be inferred from the defendant's third instructions, that this was the way he claimed.

It is, however, very evident that the sale, if any, by Shinn, was after his arrest, and while Parsons was in the exclusive possession, claiming title as aforesaid.

Richmond and Bangs, in order to get the horse away from Parsons, employed one Gore, who had, as an officer, an execution against Parsons. Gore finding Parsons with the team before mentioned, levied on the Parsons horse, and took the Shinn mare and harness without authority, and delivered them to Richmond and Bangs. A demand was then made by plaintiff, and the action brought.

These are the facts as they appear in the bill of exceptions.

The 1st point made is, that the verdict was wrong on the evidence.

Unless the defendant proved that there was a sale by Shinn, and that at the time *Shinn was in possession of the horse and delivered it to the purchaser*, the prior sale, pledge or mortgage by Shinn to Parsons cannot be considered invalid. Such a sale is only invalid as to a second sale by the same vendor, he remaining *in possession after the first sale, and being the visible owner and possessor at the time of the second sale.*

If there were no sale at all from Shinn to Richmond and Bangs, and by them to Overmire, then Overmire could not raise the question as to whether the sale by Shinn to Parsons was invalid, by reason of a want of change of possession.

The Bill of Exceptions containing all the evidence, there was none connecting the title of Overmire with that of Shinn.

Again, a sale of property held adversely to the vendor's title, has been held not to pass the property. *McGoon vs. Ankney*, 11 Ill's, 558.

The defendant's second instruction is wrong. Suppose the mare was not delivered by Shinn to Parsons under the arrangement of the pledge or mortgage—if Parsons had got possession and had

it when Shinn sold to Richmond and Bangs, such arrangement was not void in law as to purchasers of Shinn, the property being so in Parsons' possession at the time of the sale from Shinn to Richmond and Bangs.

The third instruction of defendant is worse still. Both of these instructions should contain the idea of Shinn being in possession of the horse when he sold it to Bangs and Richmond, and that he delivered it to them.

The plaintiff's 7th instruction is the law. Such possession was all that could be delivered under the circumstances. Shinn and Parsons were living in the same house, and carrying on the same farm, and the two horses were used by them both to work the farm.

Are persons occupying such a relation to be deprived entirely of the right to sell property to each other? Where all the possession is delivered that can be, the sale is not fraudulent as to subsequent purchasers, &c.

The court will find no evidence in the record that Shinn remained in possession, and *being in possession at the time, sold and delivered the property to any one*, subsequently to the time he pledged it to the plaintiff; and this should affirmatively appear before the second purchaser is in a condition to set up that the first sale was fraudulent, because possession was not delivered.

The reason of the law is, that one having sold, shall not, by remaining in possession and selling again as the possessor and apparent owner, thus defraud the second purchaser, by inducing the belief that the vendor so in possession is the owner. On the contrary, it appears plain enough, that if the omitted fact, if it exists, of the sale by Shinn to Richmond and Bangs were in the Bill of Exceptions, the second sale was when Parsons was in the exclusive possession of the property, claiming it adversely to Shinn.

It appears by the pleas that Richmond and Bangs are attorneys at law. Shinn had killed a man and was arrested. If Shinn did sell the horse to Richmond and Bangs, the inference is, that it was to pay the attorneys a retainer for the defence in the approaching trial, and that this was at the time when the mare was in the possession of Parsons, then claiming that it was pledged to him as security for debt.

LELAND & LELAND, for Pl'ff. in Error.

74. 15

Passons vs Coersmire

Abstract & brief
of p^{er}ff. in error

Filed April 20, 1839

L. S. Land
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of *Marshall* Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Peoria* County, before the Judge thereof, between *Ezekiel Parsons*

plaintiff, and *William Overmire*

defendant, it is said that manifest error hath intervened, to the injury of the said *Ezekiel Parsons*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

William Overmire

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William Overmire* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *12th* day of *June* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

L. Seland
Clerk of the Supreme Court.
J. B. Rice Deputy

I have served this Writ by reading the same to the Within
 Named William Overmire on this fourteenth day of February
 A.D. 1839 as Within I am commanded

Thomas Ellis Sheriff of Marshall County
 J. H.

Sheriff's Fee
 Serving - 50 ct
 Return 10
 Postage 1.20
 1.23

By J. B. Gore Sept

74
 Ezekiel Parsons
 07
 William Overmire
 Scire facias

Filed Feb. 17. 1839
 L. Leland
 J. J. Davis Deputy

Know all Men by These Presents, That *We Ezekiel Parsons*

as principal, and *Samuel L. Fleming*
as security, are held and firmly bound unto *William Overmire*

penal sum of *three hundred dollars* in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said
Parsons & Fleming we good

bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, our hands & seals

this *17th* day of *May* A. D. 185*8*,

The Condition of the above Obligation is such, That, whereas, the above named
William Overmire
did, at the *April* Term of the *Circuit* Court,
held in and for the County of *Marshall* in the State of Illinois, A. D. 185*6* recover a
judgment against the above bounden *Ezekiel Parsons*

for the sum of *fifty nine dollars & costs of suit &*
judgment of returns to reverse which said judgment, the said *Parsons*
has sued out a Writ of

Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
Parsons

shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against *said Parsons*

and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Ezekiel Parsons [SEAL.]
by *Samuel L. Fleming* his Attorney in fact [SEAL.]
Samuel L. Fleming [SEAL.]
[SEAL.]

Ezekiel Parsons
vs ~~228~~ 74

William Overmire

Supd. Bond

Filed June 12 1838
S. Deland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the

Circuit

Court for the County

Marshall

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall County, before the Judge thereof, between Ezekiel Parsons

plaintiff, and William Overmire

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Ezekiel Parsons

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this twelfth day of June in the Year of Our Lord our thousand eight hundred and fifty-eight.

S. Seland
Clerk of the Supreme Court.

by J. B. Rice Deputy

Ezekiel Parsons

~~828~~ 74

William Overmire
Writ of Error

This writ of error is made
a supersedeas and as such
is to be obeyed by all
concerned

Leland J. Bell
by J. B. Kinsley

Filed June 12, 1878

L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
TO THE SHERIFF OF THE COUNTY OF *Marshall*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* county, before the Judge thereof, between *Ezekiel Parsons* plaintiff
and *William Overmire*

defendant, it is said that manifest error hath intervened, to the injury of the said

Ezekiel Parsons

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *William Overmire*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *Monday* in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William Overmire*

notice, together with this writ.

WITNESS, The Hon. *John D. Barton* ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *12th* day of *October* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*seven*.

Leban
Clerk of the Supreme Court.

By J. B. Rice Deputy

Ezekiel Parsons
74 vs
William Overmire
Sci. fa

I have served this writ by reading the
same to the within named William Overmire
on the 14th day of October 1857
J. A. Greene Sheriff of -

Marshall County

Illinois

Service - 50
Fringes 70

Return \$1.30

Filed March 12, 1858
L. Leland
Clerk

Know all Men by These Presents, That *Ezekiel Parsons*

as principal, and *Samuel L. Fleming*
as security, are held and firmly bound unto *William Overmire*

penal sum of *Three hundred dollars* in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said
Ezekiel Parsons and Samuel L. Fleming good

bind *themselves & their* heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, *our hands, & seals*

this *tenth* day of *October* A. D. 1857

The Condition of the above Obligation is such, That, whereas, the above named
William Overmire

did, at the *April* Term of the *Circuit* Court,
held in and for the County of *Marshall* in the State of Illinois, A. D. 1856 recover a
judgment against the above bounden *Ezekiel Parsons*

and judgment of Return for the sum of *fifty nine dollars & costs of suit*
to reverse which said judgment, the said *Ezekiel Parsons*

has sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
Ezekiel Parsons

shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against *said Ezekiel Parsons*

and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Ezekiel Parsons by *Samuel L. Fleming* his attorney in fact
Samuel L. Fleming

[SEAL.]

[SEAL.]

Ezekiel Parsons
vs
William Overmire
74

~~Ezekiel Parsons~~

Supdo Bond

Filed Oct 12 1857
S. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Marshall* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* County, before the Judge thereof, between *Ezekiel Parsons*

plaintiff, and *William Overmire*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

Ezekiel Parsons as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday of April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

John D. Eaton
WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *12th* day of *October* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Seven

L. Seland
Clerk of the Supreme Court.
by J. B. Rice Deputy

Ezekiel Parsons
vs 74
William Overmire
Writ of Error

This writ of error is
made a supersedeas,
and as such is to be
obeyed by all concerned.

L. Leland
Clerk
by J. B. Nix *deputy*

Filed Oct. 12. 1857

L. Leland
Clerk

State of Minnesota
Marshall County Silas Ramsey being
duly sworn deposes
and says that he is well
acquainted with Samuel L
Flaming whose name appears
as security on the attached appeal
Bond in the case of Criminal
Persons vs William Oremus
and for the bond sum of three
hundred dollars and that
the above named Flaming
is good being worth twice
more than say all the above
sum to & submitted
before me this 9th day of Oct 1857. —
Silas Ramsey
James Nesbitt
clerk

Judge Seland

Please have the Supersederas
issued and sent down by first mail
in haste. Saml L. Flaming

William Overmire
vs⁷⁴
Ezekiel Parsons

Adopt

Filed Oct. 12, 1857
S. Leland
Clerk